

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

NILSA RIVERA IRIZARRY,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CIVIL NO.: 19-1418 (MEL)

**OPINION AND ORDER**

On February 4, 2020, judgment was entered remanding this case to the Commissioner of Social Security for further administrative proceedings pursuant to the fourth sentence of Title 42, United States Code, Section 405(g). ECF No. 24. On April 16, 2020, counsel Pedro G. Cruz (“Cruz”) filed a motion for attorney’s fees for the sum of \$1,600.96 pursuant to the Equal Access to Justice Act (EAJA), Title 28, United States Code, Section 2412. ECF No. 25. This motion was granted on June 16, 2020. ECF No. 29.

On September 18, 2021, Cruz filed a petition for attorney’s fees for the sum of \$9,000.00 pursuant to Title 42, United States Code, Section 406(b). ECF No. 30. According to Cruz, it was not until September 15, 2021, that he received by fax the “corrected Notice of Award”. *Id.* at 2; 30-2. I have held that “a petition for attorney’s fees under Section 406(b) must be filed within fourteen (14) days of counsel receiving notice of the benefits award” and that “Federal Rule of Civil Procedure 54(d)(2)(B)’s filing deadline is tolled until the Commissioner of Social Security issues the notice of award and the attorney is notified of the same.” *Meléndez v. Comm’s of Soc. Sec.*, 18-1965 (MEL), 2021 WL 4485393, at 1-2 (citing *Sinkler v. Berryhill*, 932 F.3d 83 (2d Cir. 2019)). This approach of tolling the filing deadline until the notice of benefit awards is received by counsel in the handling of attorney’s fees requests pursuant to Section 406(b) in Social

Security cases is not at odds with District Court of Puerto Rico Local Rule 54(b), nor with proposed District of Puerto Rico Local Rule 9(d)(2) which provides that a “party seeking attorney’s fees pursuant to 42 U.S.C. §406(b) shall have fourteen (14) days after counsel’s receipt of the original, amended, or corrected Notice of Award, whichever is latest, to file its request for attorney’s fees.” 03-MC-115, ECF No. 63-1. Therefore, in the case at bar Cruz’s petition for attorney’s fees pursuant to Title 42, United States Code, Section 406(b) was timely filed.

Cruz’s request for \$9,000.00 in attorney’s fees is excessive, particularly taking into account that in this case the Commissioner of Social Security filed a consent motion to remand (ECF No. 22), thus sparing plaintiff from having to file a detailed memorandum in support of the request to reverse the decision of the Commissioner of Social Security at the administrative level. To request \$9,000.00 for 7.8 hours of work amounts to a *de facto* hourly rate of \$1,153.85. Therefore, Cruz’s request for attorney’s fees under Section 406(b) will be GRANTED IN PART AND DENIED IN PART. Attorney’s fees under Section 406(b) are awarded for the sum of \$4,680.00. Of course, Cruz must return the previously awarded EAJA fees.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 8th day of February, 2022.

s/Marcos E. López  
U.S. Magistrate Judge